Supreme Court, U.S.
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No. _____

In The Supreme Court Of The United States

REGINALD A. WILKINSON, et al.,
Petitioners,

v.

HBRANDON LEE FLAGNER,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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25 pp

QUESTION PRESENTED

Under *Turner v. Safley*, 482 U.S. 78, 89 (1987), "when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests."

Does *Turner* require courts to conduct a personally-tailored review for each inmate who challenges such a regulation, forcing the government to show on a case-by-case basis why that particular inmate must obey the regulation, or may the government instead satisfy *Turner* and compel all inmates to comply with each generally-applicable prison regulation by showing that the regulation is rationally related to the government's legitimate penological interests for the prison population as a whole?

PARTIES TO THE PROCEEDING

Petitioners are Reginald Wilkinson, Harry Russell, Curtis Wingard, Bobby Couch, David Gardener, Jack Walker and Ron Half, each of whom works for the State of Ohio in the Ohio Department of Rehabilitation and Correction.

Respondent is an inmate at the Ross Correctional Institution in Chillicothe, Ohio.

TABLE OF CONTENTS

Page

Question Presented ..... unnumbered

Parties to the Proceeding ..... unnumbered

Table of Authorities ii

Opinions Below 1

Jurisdiction 2

Constitutional And Statutory Provisions Involved 2

Introduction 3

Statement 5

Reasons For Granting The Petition 8

I. The Circuits Are Divided On The Question Presented. 9

II. The Decision Below Conflicts With This Court's Own Precedents. 11

III. The Appellate Court's Judgment Will Impact Prisons, Jails and Courts Significantly. 15

Conclusion 17

TABLE OF AUTHORITIES

Page

Cases:

Amatel v. Reno,
156 F.3d 192 (D.C. Cir. 1998), *cert. denied*, 527 U.S. 1035 (1999) 9

Bell v. Wolfish,
441 U.S. 520 (1979) 12

Cole v. Flick,
758 F.2d 124 (3rd Cir. 1985), *cert. denied*, 474 U.S. 921 (1985) 10, 11

Employment Division v. Smith,
494 U.S. 872 (1990) 14

Friedman v. Arizona,
912 F.2d 328 (9th Cir. 1990), *cert. denied*, 498 U.S. 1100 (1991) 10, 11

Fromer v. Scully,
874 F.2d 69 (2nd Cir. 1989) 10, 11

Goldman v. Weinberger,
475 U.S. 503 (1986) 13, 14

Green v. Polunsky,
229 F.3d 486 (5th Cir. 2000) 10

Hall v. Bellmon,
935 F.2d 1106 (10th Cir. 1991) 10

Hamilton v. Schriro,
74 F.3d 1545 (8th Cir. 1996), *cert. denied*,
519 U.S. 874 (1996).....10

Harlow v. Fitzgerald,
457 U.S. 800 (1982).....6

Harris v. Chapman,
97 F.3d 499 (11th Cir. 1996), *cert. denied*,
520 U.S. 1257 (1997).....10

Herlein v. Higgins,
172 F.3d 1089 (8th Cir. 1999).....10

Hewitt v. Helms,
459 U.S. 460 (1983).....12

Hicks v. Garner,
69 F.3d 22 (5th Cir. 1995).....10

Hines v. South Carolina Department of Corrections,
148 F.3d 353 (4th Cir. 1998).....10

Hudson v. Palmer,
468 U.S. 517 (1984).....12

Lewis v. Casey,
518 U.S. 343 (1996).....12

In re Long-Term Administrative Segregation of Inmates,
174 F.3d 464 (4th Cir. 1999), *cert. denied*,
528 U.S. 874 (1999).....9

O'Lone v. Estate of Shabazz,
482 U.S. 342 (1987).....16

Pollock v. Marshall,
845 F.2d 656 (6th Cir.), *cert. denied*, 488 U.S. 897 (1988).....7

Shaw v. Murphy,
121 S. Ct. 1475 (2001).....14

Thompson v. Souza,
111 F.3d 694 (9th Cir. 1997).....10

Thornburgh v. Abbott,
490 U.S. 401 (1989).....4, 11

Turner v. Safley,
482 U.S. 78 (1987).....*passim*

Washington v. Harper,
494 U.S. 210 (1990).....16

Waterman v. Farmer,
183 F.3d 208 (3rd Cir. 1999).....9

STATUTES

28 U.S.C. 1254(1) 2

42 U.S.C. 1983 ..... 2, 5

Ohio Admin. Code 5120-9-25(D) 5

Ohio Admin. Code 5120-9-25(F) 3, 5

MISCELLANEOUS

A. Beck and P. Harrison, *Prisoners in 2000* (Bureau of Justice Statistics, U.S. Dept. of Justice 2001). 15

L. Meachum, *Judicial Business of the United States Courts: 2000* (Administrative Office of the U.S. Courts 2001) 17

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PETITION FOR A WRIT OF CERTIORARI

The Attorney General of Ohio, on behalf of defendants Reginald Wilkinson, Harry Russell, Curtis Wingard, Bobby Couch, David Gardener, Jack Walker, and Ron Half, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals is reported at 241 F.3d 475. Pet. App. 1a-32a. The opinions of the district court are unreported. Pet. App. 35a-42a and 43a-48a. The

report and recommendation of the magistrate judge is unreported. Pet. App. 49a-67a.

JURISDICTION

The court of appeals entered judgment on February 22, 2001. The court of appeals denied a timely petition for rehearing on May 25, 2001. Pet. App. 33a-34a. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The First Amendment to the United States Constitution provides, in pertinent part, that "Congress shall make no law . . . prohibiting the free exercise [of religion]."

2. The Fourteenth Amendment to the United States Constitution states, in relevant part, that "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law."

3. Respondent filed suit under 42 U.S.C. 1983, which states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and

> laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

4. Section 5120-9-25(F) of the Ohio Administrative Code imposes regulations for the "[a]ppearance and grooming of male inmates" in Ohio's prisons, and states: "Sideburns, beards, and moustaches must be neatly trimmed. Facial hair must not protrude more than one-half inch from the skin."

INTRODUCTION

This petition presents an important question about prison administration on which the circuit courts of appeals are now divided. The question is whether state prison officials must justify the enforcement of generally-applicable rules on a case-by-case basis whenever a prisoner challenges one of those rules. In this case, the court of appeals held that a prisoner may seek injunctive relief to block the enforcement of a prison regulation whenever state officials have not shown that the particular prisoner-plaintiff poses the kind of security risk that the regulation is designed to prevent. The court's willingness to let the prisoner's suit proceed in this case, notwithstanding the fact that the regulation he challenges on free-exercise grounds is generally-applicable, religion-neutral and entirely reasonable for the prison population as a whole, is in direct conflict with the ruling of all other circuit courts of appeals on this same issue.

Those other courts have held – and properly so – that a prison regulation valid on its face can be enforced across the board against all prisoners, whether or not each of them poses a particular danger of the type that the regulation is designed to prevent. The reasoning of those other courts is

sound – and the conflicting approach of the Sixth Circuit is unsound – for a very practical reason: state prison officials are ill-equipped to implement general regulations in a patchwork pattern based on the individual dangers posed by each prisoner, and any effort to impose on each prisoner only those regulations deemed reasonably necessary to keep each particular prisoner in line is simply not feasible in large state prisons where typically hundreds of regulations apply. Indeed, the very process of exempting some prisoners from rules that others must follow creates in the prison setting the type of resentment among the inmates that prison officials try to lessen by imposing regulations that treat all prisoners alike.

In ruling as it has, the court of appeals has ignored this Court's directive that rigorous scrutiny is simply "not appropriate for consideration of regulations that are centrally concerned with the maintenance of order and security within prisons." *Thornburgh v. Abbott*, 490 U.S. 401, 410 (1989). Time and again, this and lower federal courts have explained that "separation of powers concerns counsel a policy of judicial restraint" when prison policies designed by the other branches of government are under attack. *Turner v. Safley*, 482 U.S. 78, 85 (1987). The approach of the court of appeals turns that "deference to the appropriate prison authorities," *id.*, on its head, subjecting state officials to suit in the federal courts whenever any particular inmate objects to the imposition on him of a generally-applicable prison regulation.

Because the appellate court's errant approach mistakenly forces state prison officials to design individualized rules tailored to each inmate's own level of dangerousness, and because that approach stands as an outlier next to the proper approach followed in other federal

courts, we respectfully ask the Court to grant certiorari in this case.

STATEMENT

Respondent Hbrandon Lee Flagner is an Ohio prison inmate who seeks monetary damages and an injunction barring state officials from cutting his facial hair. Flagner, who has been imprisoned since 1986, became an Orthodox Hasidic Jew in 1991, and he alleges that his religious faith prohibits him or others from shaving or cutting his beard.

The various state officials whom Flagner has sued under 42 U.S.C. 1983 do not dispute the sincerity of Flagner's religious beliefs, and do not question the relevant tenets of his religious faith. However, Ohio's religion-neutral prison regulations direct that inmates' facial hair "must not protrude more than one-half inch from the skin," Ohio Admin. Code 5120-9-25(F), and state that hair on the scalp must be no "more than three inches" in length. Ohio Admin. Code 5120-9-25(D). Prison officials' efforts to force Flagner to comply with this hair-length restriction prompted his lawsuit in 1996.

Both Flagner and the defendant state officials sought summary judgment in the district court. In ruling on the parties' motions, the magistrate judge applied *Turner v. Safley*, 482 U.S. 78, 89 (1987), which held that "when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." Thus, in weighing the merits of Flagner's First Amendment free-exercise claim, the magistrate judge considered the penological interests supporting Ohio's hair-length regulation.

The defendant state officials argued that the regulation furthers legitimate penological interests by (1) preventing inmates from hiding drugs or weapons in their beards, (2) eliminating extra staff time spent checking for those items, (3) controlling the use of long hair or beards as gang symbols within state prisons, and (4) ensuring that inmates who escape from custody cannot alter their appearance quickly by cutting previously-lengthy hair or beards. Pet. App. 60a-63a. The magistrate judge concluded that genuine factual disputes existed on those claims, so he recommended that both Flagner's and the defendants' summary judgment motions be denied. Pet App. 67a.

The district court adopted the magistrate judge's recommendation, agreeing that a jury should decide whether Ohio's hair-length regulations are "reasonably related to legitimate penological interests," even though the court of appeals had rejected two earlier First Amendment challenges to those very regulations. Pet. App. 46a-47a.

The defendant state officials then filed a second summary judgment motion, arguing that they are entitled to qualified immunity on Flagner's claim for monetary damages. The district court again denied the motion, finding that "material issues of fact exist as to the legitimacy of defendants' proffered justifications for enforcing the hair regulation against plaintiff." Pet. App. 40a.

The defendant state officials then appealed. The court of appeals held, as had the district court, that Ohio officials were required to show that the hair-length regulation was "reasonably related to legitimate penological interests." Pet. App. 11a (citing *Turner v. Safley*, 482 U.S. 78, 89 (1987)). But in weighing whether state officials had violated a "clearly established statutory or constitutional right[] of which a reasonable person would have known," *Harlow v.*

Fitzgerald, 457 U.S. 800, 818 (1982), the district court had erred, according to the court of appeals. Pet. App. 13a. Noting that the court of appeals itself had previously upheld an earlier version of the Ohio prison grooming regulation in a case involving a Lakota American Indian, see *Pollock v. Marshall*, 845 F.2d 656, 659-60 (6th Cir.), *cert. denied*, 488 U.S. 897 (1988), the court of appeals concluded that the defendant state officials in this case had not violated a "clearly established" right by likewise insisting that Flagner cut his beard. Pet. App. 14a. The court of appeals therefore concluded that the defendant state officials were entitled to qualified immunity on Flagner's claim for money damages, and so reversed the district court's denial of the defendants' second summary judgment motion on that claim.

Turning to Flagner's claim for declaratory and injunctive relief, however, the court of appeals found that Flagner had "presented sufficient evidence to raise questions about the validity of the defendants' asserted penological interests." Pet. App. 16a. The court of appeals found at least some of the security and staffing concerns offered by the defendant state officials in support of the hair-length regulation to be "facially appealing," Pet. App. 19a, but found those concerns unjustified in this case, because Flagner himself had never posed a security threat. See Pet. App. 18a ("no contraband has ever been recovered by prison staff during any search of his beard and sidelocks"); Pet. App. 19a ("no additional staff members were ever hired and no overtime was ever authorized to accommodate increased security demands caused by Flagner"); Pet. App. 20a ("there is no evidence in the record that Flagner's beard and sidelocks have ever been mistaken for a 'gang identifier'"); Pet. App. 21a ("there is no evidence in the record that he has ever attempted to escape from prison").

Concluding that the defendant state officials "may be exaggerating their response to the potential security threats" posed by long facial hair because Flagner himself had never posed a security concern, the court of appeals found that Flagner had "called into question the credibility" of the state officials' concerns, and so he was entitled to have a jury hear his claims for declaratory and injunctive relief. Pet App. 23a-24a. The court of appeals remanded the case for further proceedings on Flagner's claims for declaratory and injunctive relief.

Judge Nelson dissented. Though he agreed that qualified immunity barred Flagner from pursuing his claim for damages against the defendant state officials, he argued that summary judgment for the defendants was warranted on Flagner's remaining claims as well. Judge Nelson challenged the appellate court's conclusion that the "reasonably related to legitimate penological interests" test from *Turner*, 482 U.S. at 89, should be, in Judge Nelson's words, "tailored to the plaintiff's individual circumstances" as the court's approach in this case suggests. Pet. App. 27a. Noting that Ohio's prison inmate population was 45,540 as of January 2001, Judge Nelson argued that state prison officials ought to be free to apply religion-neutral regulations like the Ohio hair-length requirement to all prisoners without having to justify those regulations on a "case-by-case basis." Pet. App. 28a, 32a.

REASONS FOR GRANTING THE PETITION

The Court should review the judgment below for three reasons. First, the decision of the court of appeals conflicts with decisions from other circuits. Second, the appellate court's decision is at odds with this Court's own precedents involving prisoners and the free exercise clause. Third, the judgment below will have a far-ranging effect on

prison operations, and will likely trigger a significant increase in prisoner lawsuits.

I. The Circuits Are Divided On The Question Presented.

The decision below has created a direct conflict on the question presented. Six other circuits (the District of Columbia Circuit and the Third, Fourth, Fifth, Eighth and Ninth Circuits) have adopted the exact opposite approach to the one chosen by the Sixth Circuit. Indeed, we have found no other decisions that agree with the Sixth Circuit's analysis of this important issue involving prisoner lawsuits. See *Amatel v. Reno*, 156 F.3d 192, 201 (D.C. Cir. 1998) (applying *Turner v. Safley* to a ban on funding for sexually explicit materials in federal prisons, and rejecting a "detailed prisoner-by-prisoner . . . sifting to determine whether a particular publication will harm the rehabilitation of a particular prisoner"); *id.* at 202-03 ("The question [under *Turner*] is not whether curtailment of pictorial smut *will* advance the prison's rehabilitative project, but whether Congress could reasonably have believed that it would do so."), *cert. denied*, 527 U.S. 1035 (1999); *Waterman v. Farmer*, 183 F.3d 208, 216, 217 (3rd Cir. 1999) (applying *Turner* to a ban on pornographic materials in a state prison, and rejecting a "case-by-case analysis" of the question because "as long as the statute is rational, it clears *Safley*'s first hurdle," and "New Jersey could rationally have seen a connection between pornography and rehabilitative values") (quotations omitted); *In re Long-Term Administrative Segregation of Inmates*, 174 F.3d 464, 470 (4th Cir. 1999) (applying *Turner* to prison director's designation of a religious group as a security threat, and explaining that "[a]llowing prison officials to act only after a demonstration of individual dangerousness would deprive them of the all-important option of prevention"), *cert. denied*, 528 U.S. 874

(1999); *Hicks v. Garner*, 69 F.3d 22, 24 (5th Cir. 1995) (rejecting Rastafari inmate's free-exercise challenge to prison's ban on long hair and beards, despite prisoner's claim that the ban should not have been applied to him because he was segregated from the general prison population, and so, he claimed, "the penological interests of safety and identification do not apply to him" and "serve no valid purpose"); *Herlein v. Higgins*, 172 F.3d 1089, 1091 (8th Cir. 1999) (applying *Turner* in rejecting a prisoner's challenge to a state prison ban on the possession of music cassettes carrying warnings about explicit lyrics, explaining that "nothing in our cases . . . requires actual proof that a legitimate interest will be furthered by the challenged policy"); *Thompson v. Souza*, 111 F.3d 694, 702-03 (9th Cir. 1997) (rejecting a prisoner's attack on prison strip search and drug testing policy where the prisoner himself had no history of drug abuse).

The conflict exists not only on the general issue of the type of review that *Turner* demands for prison regulations, but also on the particular regulation that the court of appeals studied, for several other circuits have rejected challenges to prison hair-length policies. See *Fromer v. Scully*, 874 F.2d 69, 74-76 (2nd Cir. 1989) (rejecting prisoner's challenge to a hair-length regulation); *Cole v. Flick*, 758 F.2d 124, 130-31 (3rd Cir. 1985) (same), *cert. denied*, 474 U.S. 921 (1985); *Hines v. South Carolina Dep't of Corrections*, 148 F.3d 353, 358 (4th Cir. 1998) (same); *Green v. Polunsky*, 229 F.3d 486, 490-91 (5th Cir. 2000) (same); *Hamilton v. Schriro*, 74 F.3d 1545, 1554-55 (8th Cir. 1996) (same), *cert. denied*, 519 U.S. 874 (1996); *Friedman v. Arizona*, 912 F.2d 328, 331-33 (9th Cir. 1990) (same), *cert. denied*, 498 U.S. 1100 (1991); *Hall v. Bellmon*, 935 F.2d 1106, 1114 (10th Cir. 1991) (same); *Harris v. Chapman*, 97 F.3d 499, 503-04 (11th Cir. 1996) (same), *cert. denied*, 520 U.S. 1257 (1997). And those other circuits have done so even in the absence of any evidence

that the plaintiff-prisoners had engaged in the misconduct that the regulations sought to prevent. See, e.g., *Fromer*, 874 F.2d at 75 (upholding beard-length regulation for prisoners even though state officials "could offer no examples of contraband discovered in inmates' beards," and rejecting the view that prison administrators are "obliged to wait passively for inmates to disrupt prison security before acting"); *Cole*, 758 F.2d at 131 (upholding hair-length regulation for prisoners, explaining that "the mere fact that the Commonwealth did not provide documentary support for the opinions testified to by its experts is not a sufficient basis for the [district] court to have concluded that the proffered justification is unreasonable"); *Friedman*, 912 F.2d at 332 (upholding prison no-beard policy that state officials had justified "on the basis of anticipated security problems," explaining that "requiring concrete evidence to support the regulation . . . would create a conflict with *Turner*").

In ruling that the federal courts should weigh on a case-by-case basis any legal challenges to generally-applicable (and religion-neutral) prison regulations like Ohio's beard-trimming requirement, the court of appeals has departed from the uniform course set by other lower courts. The issue is an important one, and it merits review now.

II. The Decision Below Conflicts With This Court's Own Precedents.

The individualized case-by-case approach called for by the court of appeals in cases involving the validity of prison regulations runs counter to this Court's own precedents. The Court has consistently recognized that "[s]ome latitude in anticipating the probable consequences of allowing certain [conduct] . . . in a prison environment is essential to the proper discharge of an administrator's duty." *Thornburgh v. Abbott*, 490 U.S. 401, 409 (1989) (quoting

Procunier v. Martinez, 416 U.S. 396, 414 (1974)). And the Court has just as consistently rejected the suggestion that those officials may not act to address perceived dangers until they "can compile a dossier" demonstrating the necessity for specific preventive actions. *Bell v. Wolfish*, 441 U.S. 520, 551 n.32 (1979) (quoting *Jones v. North Carolina Prisoners' Labor Union*, 433 U.S. 119, 133 (1977)).

Likewise, the appellate court's focus on respondent Flagner's behavior in prison, and the court's conclusion that he therefore need not necessarily comply with prison regulations designed to avert misbehavior generally among the prison population, does not square with this Court's view that "prison administrators necessarily draw on more than the specific facts surrounding a particular incident" in the process of "assessing the seriousness of a threat to institutional security." *Hewitt v. Helms*, 459 U.S. 460, 474 (1983). This Court has therefore "rejected the case-by-case approach to the 'reasonableness' inquiry in favor of an approach that determines the reasonableness of contested practices in a categorical fashion." *Hudson v. Palmer*, 468 U.S. 517, 538 (1984) (O'Connor, J., concurring). See also *Turner*, 482 U.S. at 91-92 (holding that a ban on inmate-to-inmate correspondence was rationally connected to the goals of maintaining security and suppressing gang activity, without requiring specific evidence that such correspondence had led to violence or gang activity in the past).

The approach of the court of appeals undermines the ability of prison officials to impose generally-applicable, proactive security measures, for evidently they must now decide whether those measures should apply to each prisoner based on that prisoner's past record while incarcerated. That is just the approach already rejected by this Court in *Lewis v. Casey*, 518 U.S. 343 (1996). In that case, as here, a district court had struck a generally-applicable prison regulation,

holding that it could be enforced "[o]nly if prison administrators c[ould] 'documen[t]' an individual prisoner's" past history of misconduct. *Id.* at 391 (Thomas, J., concurring). This Court rejected that "'one free bite' approach," *id.*, yet the court of appeals has now revived that notion, holding that Flagner need not comply with prison regulations until prison officials demonstrate that he in particular poses a security risk.

The decision below contradicts this Court's free-exercise precedents as well. In *Goldman v. Weinberger*, 475 U.S. 503, 509 (1986), the Court disapproved the view that "the First Amendment requires the Air Force to make an exception to its uniform dress requirements for religious apparel unless the accouterments create a 'clear danger' of undermining" military interests. Though the serviceman in that case "argue[d] that the Air Force failed to prove that a specific exception for his practice of wearing an unobtrusive yarmulke would threaten discipline," and though he faulted the Air Force for citing "no support from actual experience or a scientific study in the record" that might demonstrate the importance of the military's dress regulations, this Court described those arguments as "quite beside the point." *Id.*, 475 U.S. at 509. The Court explained that the decision about those dress regulations was a matter for the "appropriate military officials" to decide, even if the "military's perceived need for uniformity" has the "effect . . . [of] restrict[ing] the wearing of the headgear required by" some service members' religious beliefs. *Id.*, 475 U.S. at 510.

The same is true here, for just as the Air Force in that case did not need to prove that granting a religious exemption to the serviceman would hamper the military's legitimate objectives, and just as the Air Force likewise did not need to wait until that serviceman himself had hampered those objectives before compelling him to comply with the dress

regulations, so Ohio prison officials ought not be forced to justify to a federal court their efforts to enforce the beard-length restriction against respondent Flagner. The strong deference afforded by the Court to the military officials in *Goldman* should apply no less to the prison administrators in this case.

And of course the Court held in an oft-cited free-exercise case that "generally applicable, religion-neutral laws that have the effect of burdening a particular religious practice need not be justified by a compelling governmental interest." *Employment Division v. Smith*, 494 U.S. 872, 886 n.3 (1990). Resolving free-exercise questions differently could very well force judges to "weigh the social importance of all laws against the centrality of all religious beliefs." *Id.* at 890. That alternative approach – one seemingly adopted by the court of appeals in this case – is all the more troubling in the prison context, where this Court has said that the federal courts should not be "the primary arbiters of what constitutes the best solution to every administrative problem," and where government regulations are not subject to a "strict scrutiny" or "least restrictive alternative" test. *Turner*, 482 U.S. at 89, 90.

No doubt, the government's prison regulations – including those that impact some prisoners' religious activities or beliefs – should be reasonably tied to legitimate government interests. But the appellate court's view that no such general regulation may be enforced against a prisoner until the government shows that the regulation is warranted for that particular prisoner simply is not supported by this Court's past decisions. The "*Turner* factors concern only the relationship between the asserted penological interests and the prison regulation," *Shaw v. Murphy*, 121 S. Ct. 1475, 1480 (2001), rather than the relationship between the prisoner's particular circumstances and the regulation.

Flagner seeks, and the court below granted, a privilege not afforded to ordinary citizens outside the prison setting. Though no motorist on the road can rightly argue that he should be exempt from obeying speed limits or other traffic laws until the government proves that he in particular poses a danger on the highways, that is just the argument that Flagner makes – and that the court of appeals has adopted – in his effort to avoid compliance with Ohio's beard-trimming regulation for state prisoners. This Court has never adopted that approach when reviewing prisoners' rights cases, and because the judgment below has done so, this case deserves review.

III. The Appellate Court's Judgment Will Impact Prisons, Jails and Courts Significantly.

Aside from the new legal course that the judgment below charts for the handling of prisoner lawsuits, that judgment carries significant real-world adverse consequences for prison administrators. Though prison officials generally aim to "anticipate security problems," *Turner*, 482 U.S. at 89, in order to prevent those problems from occurring in the first place, the approach of the court of appeals turns that goal on its head, forcing prison officials to act only in response to documented security problems on an individual-inmate basis.

That reactive-not-proactive approach to rule-making and rule-enforcement in the prison context is both dangerous and unworkable. More than 137,000 inmates are housed in the public prisons of the four States in the Sixth Circuit. A. Beck and P. Harrison, *Prisoners in 2000* (Bureau of Justice Statistics, U.S. Dept. of Justice 2001) at 3, 7. According to the court of appeals, any generally-applicable regulation to which any of those prisoners objects must be tailored to match closely that particular prisoner's past

history. That individual tailoring of regulations will sap state resources and manpower, and will undercut the enforcement of all but the most innocuous of state regulations. If prison officials must justify their efforts to shave the beards and clip the hair of each prisoner, those officials will likewise have little power in other areas of prison management as well.

And the mere act of exempting certain prisoners from general regulations in the prison context poses its own concerns for state officials. "[S]pecial arrangements for one group would create problems as other inmates . . . [would] perceive favoritism," thereby causing "undesirable results in the institution." *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 353 (1987) (quotations omitted). If the judgment below stands, many state prison officials may well forgo the enforcement of some restrictions entirely, rather than battling prisoners on a case-by-case basis, leaving some prisoners resentful and others defiant when the restrictions are imposed on some but not others. That outcome will in turn leave all prisoners and staff at greater risk due to the overall diminution in security caused by the administrators' inability to enforce regulations – like Ohio's hair-length rule – that the administrators deem important.

Moreover, prison restrictions far afield from the First Amendment free-exercise context will be affected by the decision of the court of appeals. This Court's *Turner* decision, on which the Sixth Circuit's judgment purports to rest, applies "in all cases in which a prisoner asserts that a prison regulation violates the Constitution, not just those in which the prisoner invokes the First Amendment," because "the standard of review . . . adopted in *Turner* applies to all circumstances in which the needs of prison administration implicate constitutional rights." *Washington v. Harper*, 494 U.S. 210, 224 (1990). The approach adopted below will therefore control such legally diverse and operationally

sensitive matters as search policies, library access, visiting procedures, drug testing, inmate housing and job assignments.

Even beyond prison walls, the judgment below will impact the federal courts themselves. With more than 137,000 inmates housed in prisons and jails in the States of the Sixth Circuit, if just *one percent* of those prisoners sue – like respondent Flagner – for an exemption from enforcement of one or more disagreeable prison regulations, more than 1,300 new suits will be filed in the district courts of the Sixth Circuit. That total would more than double the number of prisoner suits pending in those courts. L. Meachum, *Judicial Business of the United States Courts: 2000* (Administrative Office of the U.S. Courts 2001), 150 Table C-3A (showing 1,009 prisoner civil rights and conditions cases pending in the district courts of the Sixth Circuit). That troubling – but entirely likely – result warrants the attention of this Court now.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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